

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5385**

A bill to amend 1949 PA 300, entitled
"Michigan vehicle code,"
by amending sections 625a, 625c, 625d, and 625g (MCL 257.625a,
257.625c, 257.625d, and 257.625g), sections 625a and 625g as
amended by 2013 PA 23, section 625c as amended by 2008 PA 463, and
section 625d as amended by 1994 PA 211, and by adding section 43a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **SEC. 43A. "PRELIMINARY ROADSIDE ANALYSIS" MEANS THE ON-SITE**
2 **TAKING OF A PRELIMINARY BREATH TEST FROM THE BREATH OF A PERSON OR**
3 **THE PERFORMANCE AND OBSERVATION OF A FIELD SOBRIETY TEST FOR THE**
4 **PURPOSE OF DETECTING THE PRESENCE OF ANY OF THE FOLLOWING WITHIN**
5 **THE PERSON'S BODY:**

6 **(A) ALCOHOLIC LIQUOR.**

1 (B) A CONTROLLED SUBSTANCE, AS THAT TERM IS DEFINED IN SECTION
2 7104 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7104.

3 (C) ANY OTHER INTOXICATING SUBSTANCE, AS THAT TERM IS DEFINED
4 IN SECTION 625.

5 (D) ANY COMBINATION OF THE SUBSTANCES LISTED IN SUBDIVISIONS
6 (A) TO (C).

7 Sec. 625a. (1) A peace officer may arrest a person without a
8 warrant under either of the following circumstances:

9 (a) The peace officer has reasonable cause to believe the
10 person was, at the time of an accident in this state, the operator
11 of a vehicle involved in the accident and was operating the vehicle
12 in violation of section 625 or a local ordinance substantially
13 corresponding to section 625.

14 (b) The person is found in the driver's seat of a vehicle
15 parked or stopped on a highway or street within this state if any
16 part of the vehicle intrudes into the roadway and the peace officer
17 has reasonable cause to believe the person was operating the
18 vehicle in violation of section 625 or a local ordinance
19 substantially corresponding to section 625.

20 (2) A peace officer who has reasonable cause to believe that a
21 person was operating a vehicle upon a public highway or other place
22 open to the public or generally accessible to motor vehicles,
23 including an area designated for the parking of vehicles, within
24 this state and that the person by the consumption of alcoholic
25 liquor, **A CONTROLLED SUBSTANCE, OR OTHER INTOXICATING SUBSTANCE OR**
26 **A COMBINATION OF THEM** may have affected his or her ability to
27 operate a vehicle, or reasonable cause to believe that a person was

1 operating a commercial motor vehicle within the state while the
2 person's blood, breath, or urine contained any measurable amount of
3 alcohol, **A CONTROLLED SUBSTANCE, OR ANY OTHER INTOXICATING**
4 **SUBSTANCE** or while the person had any detectable presence of
5 alcoholic liquor, **A CONTROLLED SUBSTANCE OR ANY OTHER INTOXICATING**
6 **SUBSTANCE, OR ANY COMBINATION OF THEM**, or reasonable cause to
7 believe that a person who is less than 21 years of age was
8 operating a vehicle upon a public highway or other place open to
9 the public or generally accessible to motor vehicles, including an
10 area designated for the parking of vehicles, within this state
11 while the person had any bodily alcohol content as that term is
12 defined in section 625(6), may require the person to submit to a
13 preliminary ~~chemical-breath~~ **ROADSIDE** analysis. The following
14 provisions apply with respect to a preliminary ~~chemical-breath~~
15 **ROADSIDE** analysis administered under this subsection:

16 (a) A peace officer may arrest a person based in whole or in
17 part upon the results of a preliminary ~~chemical-breath~~ **ROADSIDE**
18 analysis.

19 (b) The results of a preliminary ~~chemical-breath~~ **ROADSIDE**
20 analysis are admissible in a criminal prosecution for a crime
21 enumerated in section 625c(1) or in an administrative hearing for 1
22 or more of the following purposes:

23 (i) To assist the court or hearing officer in determining a
24 challenge to the validity of an arrest. This subparagraph does not
25 limit the introduction of other competent evidence offered to
26 establish the validity of an arrest.

27 (ii) As evidence of the defendant's breath alcohol content, if

1 offered by the defendant to rebut testimony elicited on cross-
2 examination of a defense witness that the defendant's breath
3 alcohol content was higher at the time of the charged offense than
4 when a chemical test was administered under subsection (6).

5 (iii) As evidence of the defendant's breath alcohol content, if
6 offered by the prosecution to rebut testimony elicited on cross-
7 examination of a prosecution witness that the defendant's breath
8 alcohol content was lower at the time of the charged offense than
9 when a chemical test was administered under subsection (6).

10 (c) A person who submits to a preliminary ~~chemical-breath~~
11 **ROADSIDE** analysis remains subject to the requirements of sections
12 625c, 625d, 625e, and 625f for purposes of chemical tests described
13 in those sections.

14 (d) Except as provided in subsection (5), a person who refuses
15 to submit to a preliminary ~~chemical-breath~~**ROADSIDE** analysis upon a
16 lawful request by a peace officer is responsible for a civil
17 infraction.

18 (3) A peace officer shall use the results of a preliminary
19 ~~chemical-breath~~**ROADSIDE** analysis conducted ~~pursuant to~~**UNDER** this
20 section to determine whether to order a person out-of-service under
21 section 319d. A peace officer shall order out-of-service as
22 required under section 319d a person who was operating a commercial
23 motor vehicle and who refuses to submit to a preliminary ~~chemical-~~
24 ~~breath~~**ROADSIDE** analysis as provided in this section. This section
25 does not limit use of other competent evidence by the peace officer
26 to determine whether to order a person out-of-service under section
27 319d.

1 (4) A person who was operating a commercial motor vehicle and
2 who is requested to submit to a preliminary ~~chemical breath~~
3 **ROADSIDE** analysis under this section shall be advised that refusing
4 a peace officer's request to take a test described in this section
5 is a misdemeanor punishable by imprisonment for not more than 93
6 days or a fine of not more than \$100.00, or both, and will result
7 in the issuance of a 24-hour out-of-service order.

8 (5) A person who was operating a commercial motor vehicle and
9 who refuses to submit to a preliminary ~~chemical breath~~**ROADSIDE**
10 analysis upon a peace officer's lawful request is guilty of a
11 misdemeanor punishable by imprisonment for not more than 93 days or
12 a fine of not more than \$100.00, or both.

13 (6) The following provisions apply with respect to chemical
14 tests and analysis of a person's blood, urine, or breath, other
15 than **A** preliminary ~~chemical breath~~**ROADSIDE** analysis:

16 (a) The amount of alcohol or presence of a controlled
17 substance ~~or both~~**OR OTHER INTOXICATING SUBSTANCE** in a driver's
18 blood or urine or the amount of alcohol in a person's breath at the
19 time alleged as shown by chemical analysis of the person's blood,
20 urine, or breath is admissible into evidence in any civil or
21 criminal proceeding and is presumed to be the same as at the time
22 the person operated the vehicle.

23 (b) A person arrested for a crime described in section 625c(1)
24 shall be advised of all of the following:

25 (i) If he or she takes a chemical test of his or her blood,
26 urine, or breath administered at the request of a peace officer, he
27 or she has the right to demand that a person of his or her own

1 choosing administer 1 of the chemical tests.

2 (ii) The results of the test are admissible in a judicial
3 proceeding as provided under this act and will be considered with
4 other admissible evidence in determining the defendant's innocence
5 or guilt.

6 (iii) He or she is responsible for obtaining a chemical analysis
7 of a test sample obtained at his or her own request.

8 (iv) If he or she refuses the request of a peace officer to
9 take a test described in subparagraph (i), a test shall not be given
10 without a court order, but the peace officer may seek to obtain a
11 court order.

12 (v) Refusing a peace officer's request to take a test
13 described in subparagraph (i) will result in the suspension of his
14 or her operator's or chauffeur's license and vehicle group
15 designation or operating privilege and in the addition of 6 points
16 to his or her driver record.

17 (c) A sample or specimen of urine or breath shall be taken and
18 collected in a reasonable manner. Only a licensed physician, or an
19 individual operating under the delegation of a licensed physician
20 under section 16215 of the public health code, 1978 PA 368, MCL
21 333.16215, qualified to withdraw blood and acting in a medical
22 environment, may withdraw blood at a peace officer's request to
23 determine the amount of alcohol or presence of a controlled
24 substance or ~~both~~ **OTHER INTOXICATING SUBSTANCE** in the person's
25 blood, as provided in this subsection. Liability for a crime or
26 civil damages predicated on the act of withdrawing or analyzing
27 blood and related procedures does not attach to a licensed

1 physician or individual operating under the delegation of a
2 licensed physician who withdraws or analyzes blood or assists in
3 the withdrawal or analysis in accordance with this act unless the
4 withdrawal or analysis is performed in a negligent manner.

5 (d) A chemical test described in this subsection shall be
6 administered at the request of a peace officer having reasonable
7 grounds to believe the person has committed a crime described in
8 section 625c(1). A person who takes a chemical test administered at
9 a peace officer's request as provided in this section shall be
10 given a reasonable opportunity to have a person of his or her own
11 choosing administer 1 of the chemical tests described in this
12 subsection within a reasonable time after his or her detention. The
13 test results are admissible and shall be considered with other
14 admissible evidence in determining the defendant's innocence or
15 guilt. If the person charged is administered a chemical test by a
16 person of his or her own choosing, the person charged is
17 responsible for obtaining a chemical analysis of the test sample.

18 (e) If, after an accident, the driver of a vehicle involved in
19 the accident is transported to a medical facility and a sample of
20 the driver's blood is withdrawn at that time for medical treatment,
21 the results of a chemical analysis of that sample are admissible in
22 any civil or criminal proceeding to show the amount of alcohol or
23 presence of a controlled substance or ~~both~~ **OTHER INTOXICATING**
24 **SUBSTANCE** in the person's blood at the time alleged, regardless of
25 whether the person had been offered or had refused a chemical test.
26 The medical facility or person performing the chemical analysis
27 shall disclose the results of the analysis to a prosecuting

1 attorney who requests the results for use in a criminal prosecution
2 as provided in this subdivision. A medical facility or person
3 disclosing information in compliance with this subsection is not
4 civilly or criminally liable for making the disclosure.

5 (f) If, after an accident, the driver of a vehicle involved in
6 the accident is deceased, a sample of the decedent's blood shall be
7 withdrawn in a manner directed by the medical examiner to determine
8 the amount of alcohol or the presence of a controlled substance ~~or~~
9 ~~or both,~~ **OTHER INTOXICATING SUBSTANCE, OR ANY COMBINATION OF THEM,**
10 in the decedent's blood. The medical examiner shall give the
11 results of the chemical analysis of the sample to the law
12 enforcement agency investigating the accident and that agency shall
13 forward the results to the department of state police.

14 (g) The department of state police shall promulgate uniform
15 rules in compliance with the administrative procedures act of 1969,
16 1969 PA 306, MCL 24.201 to 24.328, for the administration of
17 chemical tests for the purposes of this section. An instrument used
18 for a preliminary ~~chemical breath~~ **ROADSIDE** analysis may be used for
19 a chemical test described in this subsection if approved under
20 rules promulgated by the department of state police.

21 (7) The provisions of subsection (6) relating to chemical
22 testing do not limit the introduction of any other admissible
23 evidence bearing upon any of the following questions:

24 (a) Whether the person was impaired by, or under the influence
25 of, alcoholic liquor, a controlled substance **OR OTHER INTOXICATING**
26 **SUBSTANCE**, or a combination of alcoholic liquor, ~~and~~ a controlled
27 substance, **OR OTHER INTOXICATING SUBSTANCE.**

1 (b) Whether the person had an alcohol content of 0.08 grams or
2 more per 100 milliliters of blood, per 210 liters of breath, or per
3 67 milliliters of urine or, beginning October 1, 2018, the person
4 had an alcohol content of 0.10 grams or more per 100 milliliters of
5 blood, per 210 liters of breath, or per 67 milliliters of urine.

6 (c) If the person is less than 21 years of age, whether the
7 person had any bodily alcohol content within his or her body. As
8 used in this subdivision, "any bodily alcohol content" means either
9 of the following:

10 (i) An alcohol content of 0.02 grams or more but less than 0.08
11 grams per 100 milliliters of blood, per 210 liters of breath, or
12 per 67 milliliters of urine or, beginning October 1, 2018, the
13 person had an alcohol content of 0.02 grams or more but less than
14 0.10 grams or more per 100 milliliters of blood, per 210 liters of
15 breath, or per 67 milliliters of urine.

16 (ii) Any presence of alcohol within a person's body resulting
17 from the consumption of alcoholic liquor, other than the
18 consumption of alcoholic liquor as a part of a generally recognized
19 religious service or ceremony.

20 (8) If a chemical test described in subsection (6) is
21 administered, the test results shall be made available to the
22 person charged or the person's attorney upon written request to the
23 prosecution, with a copy of the request filed with the court. The
24 prosecution shall furnish the results at least 2 days before the
25 day of the trial. The prosecution shall offer the test results as
26 evidence in that trial. Failure to fully comply with the request
27 bars the admission of the results into evidence by the prosecution.

1 (9) A person's refusal to submit to a chemical test as
2 provided in subsection (6) is admissible in a criminal prosecution
3 for a crime described in section 625c(1) only to show that a test
4 was offered to the defendant, but not as evidence in determining
5 the defendant's innocence or guilt. The jury shall be instructed
6 accordingly.

7 (10) AS USED IN THIS SECTION:

8 (A) "CONTROLLED SUBSTANCE" MEANS THAT TERM AS DEFINED IN
9 SECTION 7104 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7104.

10 (B) "INTOXICATING SUBSTANCE" MEANS THAT TERM AS DEFINED IN
11 SECTION 625.

12 Sec. 625c. (1) A person who operates a vehicle upon a public
13 highway or other place open to the general public or generally
14 accessible to motor vehicles, including an area designated for the
15 parking of vehicles, within this state is considered to have given
16 consent to chemical tests of his or her blood, breath, or urine for
17 the purpose of determining the amount of alcohol or presence of a
18 controlled substance or ~~both~~ **OTHER INTOXICATING SUBSTANCE, OR ANY**
19 **COMBINATION OF THEM**, in his or her blood or urine or the amount of
20 alcohol in his or her breath in all of the following circumstances:

21 (a) If the person is arrested for a violation of section
22 625(1), (3), (4), (5), (6), (7), or (8), section 625a(5), or
23 section 625m or a local ordinance substantially corresponding to
24 section 625(1), (3), (6), or (8), section 625a(5), or section 625m.

25 (b) If the person is arrested for a violation of section 601d,
26 section 626(3) or (4), or manslaughter, or murder resulting from
27 the operation of a motor vehicle, and the peace officer had

1 reasonable grounds to believe the person was operating the vehicle
2 in violation of section 625.

3 (2) A person who is afflicted with hemophilia, diabetes, or a
4 condition requiring the use of an anticoagulant under the direction
5 of a physician is not considered to have given consent to the
6 withdrawal of blood.

7 (3) The tests shall be administered as provided in section
8 625a(6).

9 **(4) AS USED IN THIS SECTION:**

10 **(A) "CONTROLLED SUBSTANCE" MEANS THAT TERM AS DEFINED IN**
11 **SECTION 7104 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7104.**

12 **(B) "INTOXICATING SUBSTANCE" MEANS THAT TERM AS DEFINED IN**
13 **SECTION 625.**

14 Sec. 625d. (1) If a person refuses the request of a peace
15 officer to submit to a chemical test offered ~~pursuant to~~ **UNDER**
16 section 625a(6), a test shall not be given without a court order,
17 but the officer may seek to obtain the court order.

18 (2) A written report shall immediately be forwarded to the
19 secretary of state by the peace officer. The report shall state
20 that the officer had reasonable grounds to believe that the person
21 had committed a crime described in section 625c(1), and that the
22 person had refused to submit to the test upon the request of the
23 peace officer and had been advised of the consequences of the
24 refusal. The form of the report shall be prescribed and furnished
25 by the secretary of state.

26 Sec. 625g. (1) If a person refuses a chemical test offered
27 under section 625a(6), ~~or~~ **THE PEACE OFFICER WHO REQUESTED THE**

1 PERSON TO SUBMIT TO THE CHEMICAL TEST SHALL COMPLY WITH
2 SUBDIVISIONS (A) AND (B). IF A PERSON submits to the chemical test
3 or a chemical test is performed under a court order and the test
4 reveals an unlawful alcohol content, OR THE PRESENCE OF A
5 CONTROLLED SUBSTANCE OR OTHER INTOXICATING SUBSTANCE, OR ANY
6 COMBINATION OF THEM, the peace officer who requested the person to
7 submit to the test shall do all of the following, OTHER THAN
8 SUBDIVISION (B) (i) :

9 (a) On behalf of the secretary of state, immediately
10 confiscate the person's license or permit to operate a motor
11 vehicle and, if the person is otherwise eligible for a license or
12 permit, issue a temporary license or permit to the person. The
13 temporary license or permit shall be on a form provided by the
14 secretary of state.

15 (b) Except as provided in subsection (2), immediately do all
16 of the following:

17 (i) Forward a copy of the written report of the person's
18 refusal to submit to a chemical test required under section 625d to
19 the secretary of state.

20 (ii) Notify the secretary of state by means of the law
21 enforcement information network that a temporary license or permit
22 was issued to the person.

23 (iii) Destroy the person's driver's license or permit.

24 (2) If a person submits to a chemical test offered under
25 section 625a(6) that requires an analysis of blood or urine and a
26 report of the results of that chemical test is not immediately
27 available, the peace officer who requested the person to submit to

1 the test shall comply with subsection (1)(a) ~~pending receipt of the~~
2 ~~test report.~~ **AND (B) (ii) AND INDICATE IN THE NOTICE UNDER SUBSECTION**
3 **(1) (B) (ii) THAT A SUBSEQUENT CHEMICAL TEST IS PENDING.** If the report
4 reveals an unlawful alcohol content, **OR THE PRESENCE OF A**
5 **CONTROLLED SUBSTANCE OR OTHER INTOXICATING SUBSTANCE, OR ANY**
6 **COMBINATION OF THEM,** the peace officer who requested the person to
7 submit to the test shall immediately comply with subsection ~~(1)(b).~~
8 **(1) (B) (iii).** If the report does not reveal an unlawful alcohol
9 content, **OR THE PRESENCE OF A CONTROLLED SUBSTANCE OR OTHER**
10 **INTOXICATING SUBSTANCE, OR ANY COMBINATION OF THEM,** the peace
11 officer who requested the person to submit to the test shall
12 immediately notify the person of the test results and immediately
13 return the person's license or permit by first-class mail to the
14 address ~~given~~ **PROVIDED** at the time of arrest.

15 (3) A temporary license or permit issued under this section is
16 valid for 1 of the following time periods:

17 (a) If the case is not prosecuted, for 90 days after issuance
18 or until the person's license or permit is suspended under section
19 625f, whichever occurs earlier. The prosecuting attorney shall
20 notify the secretary of state if a case referred to the prosecuting
21 attorney is not prosecuted. The arresting law enforcement agency
22 shall notify the secretary of state if a case is not referred to
23 the prosecuting attorney for prosecution.

24 (b) If the case is prosecuted, until the criminal charges
25 against the person are dismissed, the person is acquitted of those
26 charges, or the person's license or permit is suspended,
27 restricted, or revoked.

(4) As used in this section: ~~,"unlawful"~~

(A) "CONTROLLED SUBSTANCE" MEANS THAT TERM AS DEFINED IN SECTION 7104 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7104.

(B) "INTOXICATING SUBSTANCE" MEANS THAT TERM AS DEFINED IN SECTION 625.

(C) "UNLAWFUL alcohol content" means any of the following, as applicable:

(i) ~~(a)~~—If the person tested is less than 21 years of age, 0.02 grams or more of alcohol per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(ii) ~~(b)~~—If the person tested was operating a commercial motor vehicle within this state, 0.04 grams or more of alcohol per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(iii) ~~(c)~~—If the person tested is not a person described in ~~subdivision (a) or (b),~~ **SUBPARAGRAPH (i) OR (ii)**, 0.08 grams or more of alcohol per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or, beginning October 1, 2018, 0.10 grams or more of alcohol per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.